BAIL SLIP

The Appellant/Accused namely, Saravanan was directed to be released on Bail as per the order of this Court dated 19.11.2004 and made in CRL MP NO. 10820/04 in CRL A NO. 1277/04.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 12.10.2006

Coram

The Honourable Mr. Justice K. RAVIRAJA PANDIAN

and

The Honourable Mr. Justice M. CHOCKALINGAM

Crl. A. No.1277 of 2004

Saravanan ... Appellant (Accused)

..Vs..

State by
the Inspector of Police,
Sathuvachari P.S. ... Respondent(Complainant)
(Crime N O. 72/03)

Appeal filed under section 374 Cr.P.C. praying to set aside the conviction and sentence imposed on the Appellant by the Principal Sessions Judge, Vellore in SC NO. 22/2004 dated 13.10.2004.

For Appellant : Mr. Karthik for
M/s T.S. Gopalan

For Respondent : Mr. P. Kumaresan ,
Addl. Public Prosecutor

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JUDGMENT

(Judgment was delivered by M. CHOCKALINGAM, J.)

Sole accused, on being found guilty for the offences under Sections 302 and 506(ii) of the Indian Penal Code and awarded with life imprisonment together with fine of Rs.1,000/- in default to undergo 6 months Rigorous Imprisonment for an

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offence under Section 302 of the Indian Penal Code and two years Rigorous Imprisonment together with fine of Rs.500/- in default to undergo 3 months Rigorous Imprisonment for an offence under Section 506(ii) of the Indian Penal Code, challenging the judgment of the Court of Principal Sessions Judge dated 13.10.2004 passed in S.C. No.2 of 2004, has brought forth this appeal.

2. The short facts necessary for the disposal of the case can be stated thus:-

(i) P.W.1 is the husband of the deceased Santhi and the accused/appellant is the nephew of P.W.1. P.W.1 was doing beedi work and he is suffering from ill health. The accused was living in the next house. The accused developed illicit intimacy with the deceased. It was noticed by P.W.1 and he wanted to chastise them, but in vain.

(ii) On 4.2.2003 in morning hours, P.W.1 went outside the house and returned at 8.00 a.m. Thereafter, he did not find his wife. Hence he immediately questioned his brother's sons Mohan and Harikrishnan about his wife. They informed him that she has gone to the river side and immediately, he, accompanied by his friend Vinayagam P.W.2, went to the river side, where they found the accused and the deceased were conversing and having a quarrel. Thereafter, the accused told her that so long as she was alive, he could not marry and attacked her with billhook on her neck and left shoulder, pursuant to which Shanthi died. This was witnesses by P.Ws.1 and 2. When P.Ws.1 and 2 chased them, the accused criminally intimidated them. Thereafter, the accused fled away from the scene of occurrence.

(iii) Immediately, P.W.1 came to the village and informed the villagers and thereafter he proceeded to the respondent-police and gave Ex.P1 complaint and the same was registered in Crime No.72 of 2003 for the offences under Sections 302 and 506(ii) of the Indian Penal Code and the Express First Information Report Ex.P19 was despatched to the Court.

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(iv) P.W.10, the Inspector of Police, who took up investigation, proceeded to the spot, made an inspection in the presence of witnesses and prepared Observation Mahazar Ex.P5 and Rough sketch Ex.P20. He also recovered M.O.2 blood stained earth and M.O.3 ordinary earth under mahazar Ex.P6. He conducted inquest on the dead body in the presence of the witnesses and Panchayatars and prepared inquest report Ex.P21. Thereafter, the body was sent for post-mortem to P.W.3 Doctor

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Sadagopan, who has conducted autopsy on the dead body and issued Ex.P4 post-mortem Certificate, where he has opined that the deceased would appear to have died of injury to the neck and transection of the spinal cord at the carvical level.

(v) Pending investigation, the accused appeared before P.W.6, the Village Administrative Officer and gave extra judicial confession statement Ex.P9, which was recorded by him. He also took the accused to the Inspector of Police, P.W.10, who arrested him and the accused gave confession statement voluntarily to him and the admissible portion of the same was marked as Ex.P10. Thereafter, the accused produced M.O.1 bill hook, M.O.4 shirt and the same were recovered under mahazar Ex.P11 in the presence of the witnesses. Thereafter, the accused was sent to judicial custody. All the material objects, recovered from the accused and the place of occurrence were subjected to chemical analysis. The chemical analysis report is marked as Ex.P17 and serological report is marked as Ex.P18. On completion of investigation, final report is report. The case was committed to the Court of Sessions. Necessary charges were framed against the accused.

3. In order to substantiate its case, the prosecution examined P.Ws.1 to 10 and relied on Exs.P1 to 21 and also relied on M.Os.1 to 11. On completion of examination of witnesses on the side of the prosecution, when the accused was questioned under Section 313 of the Criminal Procedure Code, he denied them as false. No defence witness was examined.

4. The Trial Court, after hearing the arguments advanced by either side and scrutinizing the materials available on record, found the accused guilty under Sections 302 and 506 (ii) of the Indian Penal Code and awarded punishments referred to above. Hence this appeal is filed at the instance of the appellants.

5. Advancing arguments on behalf of the appellants, learned counsel would submit that in the instant case, the prosecution has projected its case through direct evidence of P.Ws.1 and 2. P.W.2 turned hostile. P.W.1 was the close relative of the accused. Hence his evidence has got to be scrutinized with care and caution. According to him, he came to know about the illicit intimacy earlier. If to be so, there were occasions for him to warn his wife. He has categorically stated that she often made a complaint about the accused. If she had illegal intimacy with the accused, there were no occasions to complain against the accused.

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6. Learned counsel further added that according to the prosecution, on the date of occurrence, his wife had gone to the river side. P.W.1, along with P.W.2, went in search of his wife and on his way, he saw the occurrence. It is highly doubtful whether he has really gone to the place of occurrence as put forth by the prosecution. Though the occurrence took place at 8.00 a.m., P.W.1 came back to the village and thereafter gave complaint at about 4.15 p.m. The delay caused is not explained. According to him, the Village Administrative Officer was also informed. Had it been true that the Village Administrative Officer was informed, the police came to the spot at 10.30 a.m. itself Thus, it would be quite clear that the first information report before the Court was not the one given by P.W.1 and the first information was suppressed. Apart from this, the delay was not explained.

7. Learned counsel further added that insofar as recovery was concerned, the same could not be believed for the simple reason that P.W.1 has admitted that he was examined by the police by showing the knife, which is the weapon of crime. He also deposed that he was examined by the police near the place of occurrence only once and not subsequently. If it is accepted, the confession statement made by the accused before the Village Administrative Officer and the subsequent recovery have not been proved by the prosecution. Hence, no importance could be given to the evidence of P.W.1. Under such circumstances, it would be quite clear that the prosecution has not proved its case beyond reasonable doubt, but the Lower Court has not considered all these aspects and found the accused guilty. Since the prosecution has no direct evidence or circumstance to point out the guilt of the accused, the accused is entitled for acquittal.

8. Learned counsel further contended that even the prosecution has proved the fact that it was the accused, who attacked the deceased at the time of occurrence and caused her death, in a sudden provocation due to the quarrel preceding the occurrence, which should be considered by the Court, if other part of the case is proved by the prosecution.

9. This Court heard the learned Additional Public Prosecutor on the above contentions. This Court paid its anxious considerations on the above contentions.

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10. It is not a fact in controversy that one Shanthi, wife of P.W.1 was done to death in an incident that had taken place on 4.2.2003 at about 8.00 a.m. in the place of occurrence. The said fact was never questioned by the accused at any time. Following the inquest made on the dead body and the Doctor has also conducted autopsy and gave his opinion that the deceased appears to have died due to the injury to the neck and transection of the spinal cord at the carvical level. Hence it has to be recorded that the deceased died out of homicidal violence.

11. Before the Lower Court, in order to substantiate its case, the prosecution relied on direct evidence viz. P.Ws.1 and 2. P.W.2 turned hostile. Thus, the prosecution had the only evidence of P.W.1. It is an admitted position that the accused is the nephew of P.W.1. Since P.W.1 is the close relative of the accused and he was examined as eye witness, his evidence has to be looked into with care and caution before accepting his evidence. His evidence is scrutinized. Though some discrepancies are pointed out by the learned counsel for the appellant, these discrepancies are minor, which would no way affect the prosecution case.

12. It is an admitted position that the accused is the nephew of P.W.1, his own sister's son. Hence, there is no reason for P.W.1 to give complaint against the accused and came forward to state that his wife developed illicit intimacy with the accused and he also warned the same. In the absence of any circumstance or evidence, this Court cannot discard his evidence. Apart from this, his evidence is cogent, acceptable, because it inspires the confidence of the Court. Hence the evidence of P.W.1 which is fully corroborated with medical evidence has to be accepted.

13. In the instant case, yet another circumstance in favour of the prosecution is extra judicial confession given by the accused to the Village Administrative Officer. Before accepting extra judicial confession, the Court must apply two tests viz. to whom it is made and whether the evidence of the witness inspires the confidence of the Court. The accused gave confession before the Village Administrative Officer. The Village Administrative Officer has also been examined before the Lower Court. Hence the Court is of the considered opinion that it has got to be accepted. Following the same the accused was also produced before the police and there also, a confession statement was recorded, following which, M.O.1 Billhook, weapon of crime and the blood stained shirt were also recovered in the presence of witnesses. The blood group what is found in the

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weapon of crime and shirt were found to be tallied with each other. Apart from this, ocular testimony is fully corroborated with medical evidence. The recovery part also proved by the prosecution case with unshaken evidence. All would go to show that it was the accused who committed the offence. All the contentions raised by the learned counsel for the appellant narrated above do not merit acceptance.

14. Coming to the second part of the arguments, this Court is able to see sufficient force in the contention put forth by the learned counsel for the appellant. It is admitted by P,.W.1 that due to his ill health, illicit intimacy was developed by the deceased with the accused. Despite his warning, she continued. From the confession given by the accused before the Village Administrative Officer, it could be seen that preceding the occurrence there was a quarrel, in which the accused was telling the deceased that he should be allowed to marry, which was not accepted by the deceased, which provoked the accused. Hence, due to sudden provocation, the accused committed the offence and thus, the Court is of the considered opinion that the act of the accused was not one of culpable homicide, but the act of the accused would attract the penal provisions of Section 304(I) I.P.C. Hence, the conviction and sentence imposed upon the appellant for the offence under Section 302 and 506(ii) I.P.C. are set aside and instead, the appellant is convicted under Section 304 (I) I.P.C., for which he is sentenced to undergo 10 years Rigorous Imprisonment.

15. With the above modification in conviction and sentence, the appeal is dismissed.

ssa.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Judicial Magistrate No.V,
   Vellore.

2. The Judicial Magistrate No.V,
   Vellore through
   the Chief Judicial Magistrate,
   Vellore.

3. The Principal Sessions Judge,
   Vellore.

4. The Public Prosecutor,
   High Court, Madras.

5. The Superintendent,
   Central Prison,
   Vellore.

6. The District Collector,
   Vellore.

7. The Director General of Police,
   Madras - 4.

8. The Inspector of Police,
   Sathuvachari P.S., Vellore District

MDR(CO)
NM(03.11.2006)

Crl.A. No.1277 of 2004

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